```
Case 3:09-cv-00584-RCJ-WGC Document 129 Filed 02/22/12 Page 1 of 6
 1
2
3
4
                        UNITED STATES DISTRICT COURT
                             DISTRICT OF NEVADA
 5
6
  CHRISTOPHER CARR, ROXANNE CLAYTON, )
                                            3:09-cv-00584-ECR-WGC
   and BRIAN BENNETT,
                                             (Base Case)
8
        Plaintiffs,
9
                                            Order
   vs.
10
   INTERNATIONAL GAME TECHNOLOGY, et
11
12
        Defendants.
13
  RANDOLPH K. JORDAN and KIMBERLY J. )
14
                                            3:09-cv-00585-ECR-WGC
   JORDAN,
                                             (Member Case)
15
        Plaintiffs,
16
   VS.
17
   INTERNATIONAL GAME TECHNOLOGY, et
18
  al.,
19
        Defendants.
20
21
        Plaintiffs are former employee participants in Defendant
22
   International Game Technology's ("IGT") profit-sharing plan (the
23
   "Plan") who have brought a class action suit pursuant to Federal Rule
24
   of Civil Procedure ("FRCP") 23 to allege breach of fiduciary duty
25
   claims under Section 502(a) of the Employee Retirement Income Security
26
   Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(2). Now pending before the
27
28
```

Court is Plaintiff's Motion to Dismiss and Quash Document Request (#105). The motion is ripe, and we now rule on it.

3

4

5

8

14

## I. Background

As the parties are familiar with the factual and procedural 6 background of the case up to this point, we need only reiterate the following relevant background.

Plaintiffs filed the amended complaint (#36) on March 10, 2010. 9 On February 8, 2010, this Court issued an order (#33) appointing 10 Plaintiffs Randolph K. Jordan, Kimberly J. Jordan, Christopher Carr, 11 Roxanne Clayton, and Brian Bennet as interim lead plaintiffs and 12 ||consolidating 3:09-cv-00585-ECR-RAM (member case) under 3:09-cv-13 00584-ECR-RAM (base case).

On March 16, 2011, we issued an order (#80) in which we granted 15 in part and denied in part Defendants' motion to dismiss (#40) and 16 denied Defendants' motion for summary judgment (#44) and Defendant 17 IGT Profit Sharing Committee's alternative motion for summary  $18 \parallel$  judgment (#46). We dismissed the following claims: failure to avoid 19 conflicts of interest against all Defendants; breach of prudence and 20 loyalty with respect to the imprudent investment of Plan assets 21 against all Defendants; breach of prudence and loyalty with respect 22 to failure to disclose material facts regarding the Plan against 23 Defendants Siciliano and the Director Defendants; co-fiduciary 24 liability against all Defendants under 29 U.S.C. § 1105(a)(1) and (a) (3) and against Defendant Siciliano under § 1105(a) (2).

26

27

On April 6, 2011, Defendants filed their answer (#87) to the amended complaint (#36).

On May 16, 2011, the Magistrate Judge entered the scheduling order (#100), setting the discovery deadline for May 31, 2012.

On June 14, 2011, Plaintiffs filed a motion (#105) seeking to 6 voluntarily dismiss Plaintiff Roxanne Clayton ("Ms. Clayton") as a plaintiff from this litigation and to quash Defendants' document  $8 \parallel \text{request}$  to her. Defendants responded (#108) on June 29, 2011. 9 Plaintiffs filed their reply (#115) on July 11, 2011.

10

11

13

1

2

3

4

5

### II. Discussion

## 12 A. Plaintiff Roxanne Clayton's Voluntary Dismissal

Pursuant to Federal Rule of Civil Procedure ("FRCP") 41(a)(2), |14|Plaintiffs request the Court to allow Clayton to withdraw as a 15 plaintiff from this action for personal reasons and become an absent 16 class member should the Court certify a class. FRCP 41(a)(2) 17 provides that after an opposing party has answered, an action may be 18 dismissed at the plaintiff's request only by the court, on terms 19 that the court considers proper.

Defendants disagree that FRCP 41(a)(2) is the proper procedural 21 vehicle for dismissing Ms. Clayton's claims where she wishes to 22 remain as an absent member of the putative class. Defendants 23 further imply that Clayton seeks to withdraw for the improper 24 purpose of evading discovery. Despite their contentions, Defendants 25 do not otherwise oppose Ms. Clayton's withdrawal as a named 26 plaintiff. Further, the Court is satisfied that Defendants will not

27

1 be prejudiced by her withdrawal, as there remain four similarlysituated named Plaintiffs who claims do not differ from Ms. 3 Clayton's. Finally, the Court is satisfied that Ms. Clayton does 4 not seek to dismiss her claims for the improper purpose of evading 5 discovery, (see McKenna Decl. (#116) at  $\P\P$  4-5), and will therefore 6 not inquire into her personal reasons for withdrawal. For the 7 foregoing reasons, Plaintiffs' motion to withdraw Ms. Clayton as a 8 named Plaintiff will therefore be granted.

# 9 B. Plaintiffs' Motion to Quash Defendants' Document Request

Plaintiffs seek an order of the Court "quashing" Defendant 11 IGT's First Request for Production of Documents to Plaintiff Roxanne 12 Clayton, served upon them on May 24, 2011, as she wishes to withdraw 13 as a plaintiff in this case. Defendants claim that Plaintiffs' 14 request should be denied because Plaintiffs in essence seek a 15 protective order for which they have not made the adequate showing.

It is important to again note that the Court finds that Ms. 17 Clayton is not seeking to withdraw in an attempt to evade discovery,  $18 \parallel$ a factor that distinguishes cases cited by Defendants where courts 19 have compelled withdrawing plaintiffs to submit to discovery 20 requests. Further, Ms. Clayton has no claims separate from the 21 other class members, is not in defiance of any prior court orders 22 compelling her to respond to discovery requests, and seeks to 23 withdraw at an early stage in the discovery process - all of which 24 are further factors that distinguish this case from others where a court compelled a withdrawing party to answer discovery requests.

26

10

16

27

1 However, Defendants are correct in stating that there is no subpoena here for the Court to quash, only an initial document 3 request among the parties. Presumably, Ms. Clayton may choose not to answer the document request. Defendants may wish to issue a 5 subpoena and/or a subpoena duces tecum with regard to Clayton and/or 6 her documents, which Plaintiffs may then wish to quash. Defendants 7 also have the option of a properly-styled motion to compel, at which 8 point the Court would have an adequate opportunity to address the 9 fully-briefed issue of whether Ms. Clayton, as an absent class 10 member and a former named plaintiff, should be compelled to submit  $11 \parallel$ to Defendants' discovery requests. However, that issue has not been 12 placed before the Court, nor has the issue of a protective order 13 should Plaintiffs later choose to seek one with regard to Ms. 14 Clayton. For these reasons, the Court can only deny Plaintiffs' 15 request to quash as procedurally improper, but will admonish the 16 parties that this ruling is not be construed as an order that Ms. 17 Clayton answer Defendants' discovery requests.

18

19

20

#### III. Conclusion

Plaintiff Roxanne Clayton may withdraw as a named plaintiff in 21 this case and remain as an absent putative class member, should the 22 Court certify the class. Plaintiffs' request that Defendant IGT's 23 First Request for Production of Documents as to Ms. Clayton will be 24 denied because there is no subpoena for the Court to quash, but nor 25 is Ms. Clayton ordered to submit to the request, as that issue has 26 not been properly placed before the Court.

# Case 3:09-cv-00584-RCJ-WGC Document 129 Filed 02/22/12 Page 6 of 6 IT IS, THEREFORE, HEREBY ORDERED that Plaintiffs' Motion for an Order Dismissing, Without Prejudice, Roxanne Clayton as a Plaintiff (#105) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for an Order Quashing Defendants' Document Request (#105) is **DENIED**.

DATED: February 22, 2012.